No. 80-2035

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In the Supreme Court of the United States

OCTOBER TERM, 1980

ELECTRONIC DATA SYSTEMS CORPORATION, IRAN, PETITIONER

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL RESPONDENTS

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL RESPONDENTS

Pursuant to Rule 22.6 of the Rules of this Court, the Solicitor General, on behalf of the federal respondents, files this Supplemental Memorandum to bring to the Court's attention amendments to the Treasury Department's Iranian Assets Control Regulations that were promulgated on June 4, 1981. These amendments have no direct bearing on the instant case, because the assets subject to the attachment petitioner obtained in the Southern District of New York are not subject to the Executive Orders and implementing regulations requiring assets to be transferred immediately to the Federal Reserve Bank. However, we wish to inform

the Court of the amendments because the regulations affected were cited by the parties and because the amendments may have a bearing on other Iranian asset litigation.

1. To implement the Agreement with Iran, President Carter issued Executive Order No. 12279, 46 Fed. Reg. 7919 (1981) (Pet. App. A-121 to A-123) requiring banking institutions in the United States to transfer to the Federal Reserve Bank of New York any assets of the Government of Iran or its agencies, instrumentalities, or controlled entities. This Executive Order, issued on the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. (Supp. III) 1701 *et seq.*), was ratified by President Reagan in Section 8 of Executive Order No. 12294, 46 Fed. Reg. 14111, 14112 (1981) (Pet. App. A-126). Implementing regulations promulgated by the Secretary of the Treasury restated the requirement that bank-held assets be transferred to the Federal Reserve Bank (31 C.F.R. 535.213(a), as added, 46 Fed. Reg. 14334 (Feb. 26, 1981)) (Pet. App. A-127) and provided that this transfer was to be accomplished "as soon as reasonably practicable" (31 C.F.R. 535.221(a), as added, 46 Fed. Reg. 14335 (Feb. 26, 1981)) (Pet. App. A-129 to A-130). However, as a matter of enforcement discretion, the regulations provided that until the Secretary of the Treasury determined that the authority of the United States to order the transfer of assets had been the subject of a definitive legal ruling, the United States would not seek to impose civil or criminal sanctions[1] on any party who did not make the required transfers (31 C.F.R. 535.221(b), as added, 46 Fed. Reg. 14335 (Feb. 26, 1981)) (Pet. App. A-130).

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[1]Any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act is subject to a civil penalty of not to exceed $10,000 and, if the violation is willful, to criminal sanctions of a fine of not more than $50,000 or imprisonment for not more than 10 years, or both. 50 U.S.C. (Supp. III) 1705.

2. In the attached amendments to the asset control regulations, issued on June 4, 1981, the Secretary has revoked 31 C.F.R. 535.221(a), which required the transfer of assets "as soon as reasonably practicable."[2] The Secretary has also amended 31 C.F.R. 535.213(b) to provide that assets held by banking institutions must be transferred to the Federal Reserve Bank of New York by noon, E.D.T., June 19, 1981.[3] 31 C.F.R. 535.213(b), as amended, further directs persons in possession of bank-held assets that must be transferred by June 19 to "take all actions they believe necessary to effect the required transfers"—including, if they deem it appropriate, moving for the vacating of orders of attachment pertaining to the assets. In addition, the Secretary has revoked the statement of enforcement policy, previously set forth in 31 C.F.R. 535.221(b), that the United States would not impose civil or criminal sanctions until the government's authority to direct the transfer of assets has been the subject of a definitive legal ruling.[4]

3. The effect of these amendments is to subject any persons in possession of assets required to be transferred to the Federal Reserve Bank by June 19 to criminal and civil sanctions if they do not effect the transfer by that date and to require the banks to move forthwith to have any attachments on such assets vacated immediately if they wish to do so before complying with the requirement that assets be transferred to the Federal Reserve Bank by June 19.

In the Secretary's view, the decisions of the Courts of Appeals for the First and District of Columbia Circuits, confirming the judgment of the present and previous Attorneys General that the President has the authority to revoke licenses for post-blocking order attachments and to order

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[2]See Paragraph 3, at page 4a of the attachment.

[3]See Paragraph 1, at page 3a-4a of the attachment.

[4]See Paragraph 3, at page 4a of the attachment.

the prompt transfer of property in which Iran has an interest,[5] provide the basis for revoking the previous policy of not seeking the imposition of civil or criminal sanctions against persons who do not comply with these orders. As a result, it is anticipated that the amendments will induce many banks to move expeditiously to have orders of attachment of Iranian assets held by them vacated. As we explained in our memorandum in opposition, the United States also will renew its request in the various district courts that these orders of attachment be vacated.

The measures described above were thought to be necessary in order to marshal Iranian assets in the Federal Reserve Bank of New York in a timely fashion so that they may in turn be transferred out of the country by July 19, 1981, as required by the Agreement with Iran.[6] The amendments to the regulations have no effect on the present case, however. As we have explained in our memorandum in opposition to the petition for certiorari before judgment in this case, the assets subject to the attachment petitioner obtained in New York are not covered by the regulations requiring immediate transfer to the Federal Reserve Bank in New York. See 31 C.F.R. 535.213(c), as added, 46 Fed. Reg. 26477 (May 13, 1981) (Pet. App. A-127). Those assets therefore need not be transferred to the Federal Reserve Bank in New York by June 19, and no person can be

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[5]See *Chas. T. Main International, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. May 22, 1981); *American International Group* v. *Islamic Republic of Iran*, No. 80-1779 (D.C. Cir. May 22, 1981).

[6]Under the Agreement, $1 billion of the bank-held assets will be placed in an escrow account in a central bank of another country. Funds in this account will be used to pay awards by the Iran-United States Claims Tribunal in favor of United States' claimants. The balance of the bank-held assets will be transferred to Iran. The Department of the Treasury has informed us that it will not order the transfer of assets out of the country before July 15, 1981.

subjected to criminal or civil sanctions for failing to transfer the attached assets by that date.[7] However, we thought it appropriate to bring these new regulations to the attention of the Court because the former policy of deferring criminal and civil sanctions was discussed by petitioner (Pet. 5, 13) and because the amended regulations might have an effect on the course of other cases involving Iranian assets.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1981

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[7]Petitioner concedes in its Reply Memorandum (at 2 n.*) that the assets it has attached in New York are not required by the asset control regulations to be transferred to the Federal Reserve Bank. But it suggests that the regulations are drafted to *allow* such a transfer while insulating from any liability the custodian who might choose to effect the transfer (*ibid.*, citing 31 C.F.R. 535.219, 46 Fed. Reg. 14334 (Feb. 26, 1981) (Pet. App. A-129)). This suggestion is in error. Insofar as the transfer of the bank-held assets is concerned, Section 535.219 insulates from liability only those persons who comply with Section 535.213, which *requires* the transfer of such assets. See also 50 U.S.C. (Supp. III) 1702(a)(3). Because the assets subject to petitioner's attachment in New York are excepted from the order requiring transfer of bank-held assets (see 31 C.F.R. 535.213(c); Pet. App. A-127), a custodian who nevertheless chooses to transfer these assets in contravention of the terms of an order of attachment would not be insulated from liability for that transfer by 31 C.F.R. 535.219.

IN ADVANCE OF PRINTED COPY

DEPARTMENT OF THE TREASURY
Office of Foreign Assets Control
31 CFR Part 535

Iranian Assets Control Regulations:
Transfer of Financial Assets
to Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets Control.

ACTION: Final Rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are (1) to direct banks and other persons holding Iranian financial assets to transfer them to the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981; (2) to revoke the policy of not seeking to impose criminal and civil sanctions on holders of Iranian property who do not comply with the transfer requirements of the Iranian Assets Control Regulations; (3) to provide additional guidance on the meaning of the term "commercially reasonable" rates of interest; (4) to make clear that no transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond, or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party; and (5) to require that persons making the required transfers of financial assets of Iran to the Federal Reserve Bank of New York promptly report on those transfers to the Office of Foreign Assets Control.

The amendments are needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981, providing for the release of the hostages detained in Iran and the transfer of Iranian property blocked by the United States. See further discussion under "Supplementary Information."

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION:

In a recent decision, *Chas. T. Main International, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir., May 22, 1981), the United States Court of Appeals for the First Circuit held that the President has authority to order the transfer of blocked Iranian assets without regard to attachments or other judicial orders obtained subsequent to the November 14, 1979, blocking order, and that he has the authority to settle claims of U.S. parties against Iranian entities by providing for their submission to binding arbitration.

Similarly, the United States Court of Appeals for the District of Columbia Circuit, in *American International Group* v. *Islamic Republic of Iran*, No. 80-1779 (D.C. Cir., May 22, 1981), reviewed the Executive Orders nullifying attachments and suspending claims in implementation of the January 19, 1981, agreements, and rendered a judgment that the suspension of claims "is a lawful exercise of the President's power to arrange for the settlement of claims of American nationals against governments of foreign states," and directed that attachments and other provisional remedies be vacated. These decisions confirm the legal judgments reached by the present Attorney General of the United States, and his predecessor, upholding the President's

authority to order the prompt transfer of property in which Iran has an interest. Further, they provide the basis for revocation of the policy established by the prior regulations against the seeking of civil and criminal sanctions against persons who hold or control Iranian property required to be transferred.

Section 203(a)(3) of the International Emergency Economic Powers Act (50 USC 1702(a)(3)), Section 1-103 of Executive Order 12279, Section 1-103 of Executive Order 12280, Section 1-103 of Executive Order 12281 and Section 535.219 of the Iranian Assets Control Regulations provide that compliance with the transfer directives of the Iranian Assets Control Regulations shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person so complying and further provide that no person shall be liable in any United States court for anything done or omitted in good faith compliance therewith.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

31 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * * * *

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York

on or before noon, E.D.T., June 19, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see section 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

* * * * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

2. Section 535.214 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

* * * * *

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of section 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

* * * * *

(d) The transfers of securities required by this section shall be made notwithstanding section 535.202.

3. Section 535.221 is amended by the revocation and removal of paragraphs (a), (b) and (f), by the revision of paragraphs (c) and (d) and by the redesignation of paragraphs. As amended, section 535.221 reads as follows:

Section 535.221 *Compliance with directive provisions.*

(a) Transfers of deposits or funds required by sections 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following accounts: with respect to transfers required by section 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by section 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(b) Securities to be transferred as required by sections 535.213 and 535.214 of this part that are not presently registered in the name of Iran or an Iranian entity shall be delivered to the Federal Reserve Bank of New York in fully transferable form (bearer or endorsed in blank), accompanied by all necessary transfer documentation, *e.g.*, stock or bond powers or powers of attorney. All securities transferred, including those presently registered in the name of Iran or an Iranian entity, shall be accompanied by instructions to deposit such securities to the following accounts: with respect to transfers required by section 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account A, and with respect to transfers required by section 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorsed in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

4. Section 535.337 is revised to read as follows:

Section 535.337 *Funds.*

For the purpose of this part, the term "funds" shall mean monies in trust, escrow accounts and similar special funds, money market funds, cash balances held by a broker/dealer, currency and coins. It does not include accounts created under section 535.568.

5. Section 535.438 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

* * * * *

(b) No transfer requirement under section 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established pursuant to section 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

6. Section 535.440 is revised to read as follows:

Section 535.440 *Commercially reasonable interest rates.*

For purposes of section 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances. In the case of time or savings deposits, the "commercially reasonable rate" is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the "commercially reasonable rate" will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of sections 535.212 and 535.213 as a non-interest-bearing account.

7. New section 535.620 is added as follows:

Section 535.620 *Report of transfer of domestic bank assets and financial assets held by nonbanking institutions.*

(a) *Requirement for reports.* A report shall be filed on Form TFR-620 by any bank or nonbanking institution regarding any transfer to the Federal Reserve Bank of New York under sections 535.213 and 535.214 within 5 business days of such transfer.

(b) *Contents of report.* Each report shall contain the following information:

(1) Name and address of the transferor (indicate whether bank or nonbanking institution).

(2) Name and telephone number of person to be contacted about the transfer.

(3) Description of the property transferred with a list of accounts transferred, including account party, account number, and account amount, with breakdown between principal and interest.

(4) Total value (market value in the case of securities) of each transfer.

(5) Date and time of transfer.

(6) A statement as to how interest was calculated including rate(s) of interest and period(s) for which the rate(s) was applied.

(c) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 620, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy shall be retained for the reporter's records.

(d) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential but may be disclosed to Iran.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111.)

Dated: June 4, 1981

/s/ Dennis M. O'Connell

Dennis M. O'Connell
Director

Approved:

/s/ John P. Simpson

John P. Simpson
Acting Assistant Secretary,
Enforcement and Operations

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